

USE OF UNLICENSED ASSISTANTS AND OFFICE STAFF

The Commission often receives questions from brokers and salespersons on the use of unlicensed personal assistants, secretaries, office staff, and transaction coordinators. Personal assistants are generally thought of as unlicensed persons performing various functions as employees (including clerical support) or independent contractors of a real estate broker within the framework of a real estate transaction. Inquiries generally fit into two categories: (1) whether the activity performed is one which requires a license, and (2) what are the supervisory responsibilities of an employing broker?

Personal assistants who hold active real estate licenses and the brokers in whose offices they work should be aware that the brokers are fully responsible for all licensees, whether they are called personal assistants or not, and all licensed “assistants” are fully subject to Idaho License Law and Rules.

The license law prohibits unlicensed persons from negotiating, listing or selling real property. Foremost to the use of unlicensed personal assistants is careful restriction of their activities so as to avoid illegal brokerage practice. Unlicensed personal assistants may complete forms prepared and as directed by licensees but should never independently draft legal documents such as listing and sales contracts, nor should they offer opinions, advice or interpretations. In addition, they should not distribute information on listed properties other than that prepared by the employing broker or broker associate.

On the other hand, they may:

1. Perform clerical duties for an employing broker or salesperson which may include the gathering of information for a listing;
2. Provide access to a property to contractors, home inspectors, & appraisers. They may not provide access to potential buyers;
3. Distribute prepared information at an open house, so long as no negotiating, offering, selling or contracting occurs;
4. Answer simple questions on their own brokerage's listed properties with information from MLS printouts, property flyers, data sheets and, marketing materials prepared by the brokerage and/or employing licensee;
5. Deliver paperwork to other licensees;
6. Deliver paperwork to sellers or purchasers, if such paperwork has already been

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reviewed by a licensee and no offering of opinions, giving advice, or interpretations of such documents is given;

7. Assist in the preparation of market analyses for sellers or buyers under the direction and approval of the licensee.

Designated brokers need to be especially aware of their supervisory duties under the license law. Brokers have always been and continue to be responsible for the actions of their licensed and unlicensed staff. Part of that responsibility has been supervising unlicensed staff and seeing that the unlicensed personnel does not engage in any prohibited activity -- that is, activity requiring a real estate license.

A designated broker should have a written office policy explaining the duties, responsibilities and limitations on the use of personal assistants. This policy should be reviewed by and explained to all licensees, licensed and unlicensed assistants, and office staff.

Licensees should not directly share commissions with unlicensed assistants. Although this may not technically be a violation of the license law if the activity is not one which requires a license, the temptation to “cross over” into the area of negotiating and other prohibited practices is greatly increased where compensation is based on the success of the transaction. A transaction coordinator may be paid on a per transaction basis as part of a regulated real estate transaction.

With brokers developing and implementing policies for the use of assistants and routine procedures for monitoring their activities, the assistant can serve as a valuable tool in the success of the transaction. As with any other activity involving the delegation of an act to another, the freedom and convenience afforded to the broker in allowing the use of assistants carries with it certain responsibilities for that person’s actions.